



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 12th day of February, 1996

SERVED February 16, 1996

Application of

UNITED AIR LINES, INC.

for an exemption pursuant to 49 U.S.C. Section 40109
(U.S.-Peru Route Integration) and allocation of
frequencies (Lima-Santiago)

Docket OST-95-576

ORDER GRANTING EXEMPTION AND ALLOCATING FREQUENCIES

Summary

By this order, we grant the application of United Air Lines, Inc., in Docket OST-95-576, to integrate its exemption authority to serve the Miami-Lima market with United's certificate authority to serve between Miami, Florida, and Santiago, Chile, so that United may provide scheduled foreign air transportation on a Miami-Lima-Santiago routing. This order also grants United's request for allocation of three weekly frequencies for services beyond Lima to Santiago, pursuant to the U.S.-Peru aviation agreement.

Background

Under the 1986 Air Transport Agreement between the United States and Peru, there are no limits on the number of U.S. carriers that may provide scheduled combination air services. However, the number of frequencies that U.S. carriers may operate is currently limited to 31.5 weekly frequencies of which 7 weekly frequencies may be used only from points other than Miami/Ft. Lauderdale. United is allocated 7 weekly frequencies for services in the Miami-Lima market, and American Airlines has been allocated the remaining 17.5 Miami frequencies.¹ Continental has been authorized to serve the Newark-Lima market and has been allocated 7 weekly frequencies to provide that service.²

The U.S.-Peru agreement also provides, among other things, that a U.S. carrier may operate beyond Lima to various points in South America including Santiago, Chile, with local traffic

¹ See Orders 95-4-21 and 95-7-23.

² See Order 95-12-26.

rights. Services in the Lima-Santiago market, however, are limited to three weekly flights with narrow-body equipment. Currently, no U.S. carrier is using these rights.

Under an Exchange of Notes between the United States and Chile in 1993, as amended in 1994, the United States and Chile agreed, among other things, that U.S. carrier scheduled combination services in the U.S.-Chile market would be limited to services provided at that time, with certain seasonal modifications.³ Pursuant to these Notes, American and United currently serve the U.S.-Chile market.

Applications/Responsive Pleadings

On September 5, 1995, United filed an exemption application to integrate its Miami-Lima services with United's authority on Route 632, which includes authority to serve Santiago, Chile. United also seeks allocation of three weekly fifth-freedom frequencies for services beyond Lima to Santiago, Chile, to permit United to operate a thrice-weekly Miami-Lima-Santiago service.⁴ United states that these flights will be in addition to its existing seven weekly Miami-Santiago nonstop services. United further states that its proposed services are fully consistent with the U.S.-Peru and U.S.-Chile aviation agreements, and that approval of its application will use valuable rights available under the U.S.-Peru aviation agreement.

Continental filed an answer to United's application urging the Department to defer action on the application at least until the Department's decision in the *U.S.-Lima Combination Service Case* and until the Department establishes proceedings for allocation of the limited beyond-Peru frequencies.⁵ Continental states that it recognizes that additional U.S. carrier designations in the U.S.-Chile market are unavailable under the Notes which remain in effect until December 1, 1996. Continental suggests, however, that the Department could consult with the Government of Chile for approval of additional designations in the market. Continental further argues that American and United together dominate U.S. combination-carrier access to Argentina, Brazil, Peru, and Venezuela, and that the Department should not take any action, such as United requests, which would protect "that duopoly from additional U.S.-flag competition for the long term."⁶

In its reply, United argues that the deferral Continental seeks would assure that these valuable Lima-Santiago rights would remain unused for at least another year.⁷ United reiterated its position that its proposal would provide important additional U.S. carrier competition in the U.S.-Chile market by using valuable and limited bilateral opportunities under both the U.S.-Peru and U.S.-Chile agreements. United also rejects Continental's regional competitive arguments, stating that traffic data reported in the September 6, 1995, *Aviation Daily* indicate that Continental has a larger market share in Latin American markets than United.

³ Effective through November 30, 1996.

⁴ United seeks these authorities for two years.

⁵ In this regard, Continental states that it has had a historic interest in providing service beyond Lima to Santiago, as explained in its exhibits in the *U.S.-Lima Case*

⁶ Continental's answer at 4.

⁷ United's reply at 2.

Decision

We have decided to grant United's application (1) to integrate its authorized services between Miami and Lima with its Miami-Santiago certificate authority in order to provide service on a Miami-Lima-Santiago routing; and (2) for allocation of three weekly fifth freedom frequencies for services beyond Lima to Santiago, Chile, to provide the proposed services. These authorities will be effective immediately and will remain in effect for one year.⁸ In addition, consistent with our policy on frequency allocations, we will subject United's award here to a 90-day dormancy condition.⁹

We find that approval of United's application is consistent with the public interest. Its proposal to combine its operations to provide service on a Miami-Lima-Santiago routing will provide important new service options to the travelling and shipping public and will increase competition in the Miami-Chile market. Furthermore, the authority granted is fully consistent with both the U.S.-Chile and U.S.-Peru aviation agreements. The U.S.-Chile agreement expressly authorizes services by United. The U.S.-Peru agreement provides for services in the Lima-Santiago market. United's proposed Miami-Lima-Santiago services will make effective use of valuable rights available under these aviation agreements.

We are unpersuaded by Continental's arguments that we should defer action on United's application. The rights at issue are available only to United and American, the two carriers that may now serve Chile and, thus, the only carriers eligible to exercise the Lima-Santiago route rights. Of these two, only United has firm plans to use the authority, has sought the allocation of the available frequencies, and is in a position to use them. Continental, on the other hand, is simply not now in a position to serve the Lima-Santiago market. We fully intend to explore expanded opportunities for U.S. carriers to serve Chile after November 1996. Pending resolution of such discussions, however, we find no public interest basis to defer action on United's application. Indeed, deferral of United's application would serve only to deny the public new service options and waste valuable operating rights now available to U.S. carriers under the U.S.-Peru aviation agreement, a result we find contrary to the public interest.

⁸ In light of all the facts of record in this case, including the expiration date of the U.S.-Chile Exchange of Notes (November 30, 1996), we have decided to grant the authorities requested for one year instead of two.

⁹ See Order 95-11-9.

ACCORDINGLY,

1. We (1) exempt United Air Lines, Inc., from 49 U.S.C. Section 41101, to the extent necessary to integrate its services between Miami, Florida, and Lima, Peru (authorized by Orders 95-4-21 and 95-7-23), with United's Miami-Santiago authority on United's certificate for Route 632 to the extent necessary to provide service on a Miami-Lima-Santiago routing; and (2) allocate United three weekly narrow-body frequencies for services beyond Lima, Peru, to Santiago, Chile, with local traffic rights;
2. The authority granted in ordering paragraph 1, above, shall become effective immediately and shall remain in effect for one year from the service date of this order;
3. The authority granted is subject to the condition that, if the flights allocated are not being used for 90 days, the frequency allocation will expire automatically and the frequencies will revert to the Department for reallocation;
4. In the conduct of these services, we expect United Air Lines, Inc., to comply with the otherwise applicable provisions of its certificates of public convenience and necessity, its Miami-Lima exemption authority, the Department's rules and regulations regarding scheduled air transportation services, and the terms and conditions of the U.S.-Peru and U.S.-Chile aviation agreements;
5. To the extent not granted, dismissed, or deferred, we deny all other requests in this docket; and
6. We will serve this order on Continental Airlines, Inc.; United Air Lines, Inc.; the Ambassadors of Peru and Chile in Washington, D.C.; the U.S. Department of State (Office of Aviation Negotiations), and the Federal Aviation Administration (AFS-200).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at
<http://www.dotinfo/general/orders/aviation.html>.*